

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.A.No.611-DB of 1999**
DATE OF DECISION: November 15, 2007

JAGAN @ JAGDISH S/O BUDHI ...APPELLANT

VERSUS

THE STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MR. SWARAJ ARORA, ADVOCATE
AMICUS CURIE, FOR THE APPELLANT.

MR. S.S. GORIPURIA, DAG, HARYANA.

ASHUTOSH MOHUNTA, J.

The appellant Jagan @ Jagdish has filed this appeal against the judgement of Addl. Sessions Judge(I), Faridabad dated 10.12.1999, vide which he was convicted for having kidnapped, raped and murdered a young girl Rachna aged 11 years and sentenced to undergo R.I. for 7 years and fine of Rs.500/- under Section 366 IPC, R.I. for 10 years and fine of Rs.500/- under Section 376 IPC, imprisonment for life and fine of Rs.1000/- for the offence under Section 302 IPC and R.I. for 3 years and fine of Rs.500/- under Section 201 IPC and in default of payment of each fine to further undergo R.I. for 6 months. All the substantive sentences were ordered to run concurrently.

The case of the prosecution is that on 10.4.1998, the appellant Jagan @ Jagdish came to the house of Daya Shankar and told his wife Manju that he had been sent by her husband and that she should prepare tea for him as he was to catch a train shortly. Manju PW4 told him that she did not know him and further that there was not arrangement for tea or sugar in

the house. Thereafter Manju sent her daughter Rachna aged 11 years and her son Kanhiya aged 9 years to the market for purchasing vegetables. She herself went to bathroom to take a bath. The appellant Jagan followed the two children on his bicycle. After sometime Kanhiya, the young boy of 9 years returned home and told his mother Manju that the man who had come had taken Rachna on his bicycle by telling that he was taking her to her father. When Rachna did not return home, Manju informed her husband Daya Shankar that a man had come who had pretended himself to have been sent by Daya Shankar and that he had taken Rachna alongwith him.

Daya Shankar tried to find his daughter at various places but could not locate her. On 1.7.1998, a news item appeared in the newspaper 'Punjab Kesri' that one Jagan @ Jagdish had been caught at Faridabad and he had kidnapped and had sexual intercourse with several girls. On reading the news item Daya Shankar went to the Police Station from where he came to know that the appellant had been sent to Rohtak Jail in some other case and further that Jagan was to appear in the Courts at Faridabad on 15.7.1998. On 15.7.1998, Daya Shankar alongwith his wife Manju PW4 went to the Courts at Faridabad where Manju PW4 identified the accused Jagan @ Jagdish to be the same person who had come to their house on 10.4.1998, and had taken away their daughter Rachna. After identifying Jagan, Daya Shankar lodged the FIR with regard to the incident by presenting a complaint Ex.PC at Police Post Saran.

On 26.7.1998, the appellant was interrogated by ASI Bhagat Ram in the presence of Daya Shankar PW3 and one Lambar Singh. The accused made a disclosure statement Ex.PD wherein he admitted that he kidnapped, raped and then killed the young girl Rachna. He also disclosed

that he had kept concealed the clothes of Rachna in the bushes which were standing in the water and could get the same recovered. In pursuance to the disclosure statement, the accused then got recovered the clothes of the deceased Rachna which were seized under memo Ex.PE. The clothes were a frock Ex.P1 and a skirt Ex.P2. On the basis of the disclosure statement of the accused and the registration of FIR, the appellant was charged under Section 366, 376, 302 and 201 IPC and faced trial.

To prove its case, the prosecution examined PW2 Dr. Dara Singh, Medical Officer, B.K. Hospital, Faridabad, PW3 Daya Shankar, father of the deceased, PW4 Manju, mother of the deceased, PW5 Kanhiya, brother of the deceased, ASI Raghbir Singh as PW6, ASI Prem Narain as PW7 and ASI Bhagat Ram as PW8.

The accused in his statement under Section 313 Cr.P.C. stated that he has been falsely implicated. He did not plead guilty and claimed trial.

PW4 Manju deposed before the trial Court that on 10.4.1998, the accused Jagan came to her house at about 10.30 a.m. and told her that he has been sent by her husband Daya Shankar and that she should prepare tea. At that time her husband had gone to attend his duties at a shop at Hardware Chowk in Faridabad. She further deposed that she sent her daughter Rachna alongwith Kanhiya her 9 year old son for purchasing vegetables and herself went to the bathroom to take a bath. After both the children had left, the accused also followed them. After sometime Kanhiya returned and told Manju that Rachna has been taken by the accused on a bicycle by telling them that Rachna was to be dropped at her father's shop. Manju PW4 had identified that accused when he appeared in the Faridabad Courts on

15.7.1998. It was stated that the accused had confessed before her as well as her husband that he had raped and killed Rachna. The prosecution also examined Daya Shankar as PW3 who deposed that his wife Manju had told him that the accused had come to their house by falsely posing that he was sent by him and had thereafter taken away Rachna and had killed her. He also deposed that the accused had confessed to his guilt before them in the Courts at Faridabad.

PW5 Kanhiya had also very categorically deposed that the accused was the person who had come to his house on that fateful day. He further deposed that the accused first asked him to sit on his bicycle and on refusal he then asked Rachna to sit on his bicycle stating that he is taking her to Daya Shankar PW3. PW5 Kanhiya also deposed that he had also recognized the accused in the Court premises when he was being produced in Court. He further stated that firstly the accused stated that he has kept Rachna at Agra and later on stated that he had killed Rachna. In his cross examination also, PW5 Kanhiya deposed that the accused remained at their house and interacted with them for about 30 minutes. It is pertinent to mention here that before recording the statement of Kanhiya who was a young boy, the Court put various question to him and was satisfied that PW5 understands everything and is mature enough to depose as a witness.

PW8 Bhagat Ram ASI, deposed that the accused made a disclosure statement that he could get recovered the clothes of Rachna. Then in pursuance to the said disclosure statement the accused got recovered a frock and ghaghra of Rachna which were seized under memo Ex.PE.

The trial Court after placing reliance on the statements of PW4

Manju and PW5 Kanhiya who had seen the accused and had thereafter recognized him, came to the conclusion that the accused had kidnapped raped and then killed Rachna and convicted him under Sections 366, 376, 302 and 201 IPC sentenced him to undergo rigorous imprisonment and fine for the terms mentioned in the opening para of this judgement.

Learned counsel for the appellant has contended that there are major discrepancies in the case of the prosecution. It is contended that it cannot be said with certainty that the accused had raped the deceased and then killed her as the dead body of the deceased was not found. It was further contended that although the deceased Rachna was allegedly kidnapped on 10.4.1998, but the matter was reported to the Police on 15.7.1998, as such the FIR has been registered highly belatedly and only when the accused was arrested in some other case. It is further contended that the accused was never seen prior to the occurrence by PW4 Manju and PW5 Kanhiya and therefore, it is highly improbable that a stranger could be identified after such a long period. It is also contended that no special identification marks of the clothes of the deceased were told by the prosecution and hence it cannot be said whether the clothes recovered were of the deceased Rachna.

Learned counsel for the State has vehemently argued that it was the accused-appellant only who had kidnapped, raped and then murdered the young girl Rachna. Learned counsel has placed reliance on Ex.PD disclosure statement made by the accused-appellant to the effect that he took off the clothes of the girl Rachna and then committed rape on her and after raping the girl, she was pushed by him in the Agra Canal, as a result of which she drowned in front of him in the water. Vide Ex.PE also while

demarcating the place of occurrence the accused had himself stated that he had raped the girl nearby a patri in the bushes and had pushed the girl in Agra Canal. PW4 Manju has also deposed that when the accused was identified by her in the Court premises, the accused confessed that he had raped Rachna and then killed her. PW5 Kanhiya has also deposed that the accused had admitted that he had killed Rachna. PW4 Manju had identified the appellant to be the same person who had come to their house on 10.4.1998 and thereafter her daughter went missing. The appellant was also identified by PW5 Kanhiya who had categorically deposed that the accused had taken Rachna on a bicycle by telling him that he will drop her at her father's shop.

Learned counsel has further argued that delay in FIR does not obstruct the case of the prosecution in any manner as the testimonies of PW4 Manju and PW5 Kanhiya clearly reveal that it was the accused only who had come to their house in their presence on that day. PW4 Manju has deposed in her statement that the accused had come to their house on 10.4.1998. PW4 Kanhiya has also deposed the accused visited their house in his presence. It was also stated that on the day of incident the accused followed him and Rachna to market and firstly asked PW4 Kanhiya to sit on his bicycle and on his refusal then asked Rachna to sit on his cycle saying that he was to take Rachna to her father Daya Shankar PW3.

It is further submitted that identification of the accused needs no proof as PW4 Manju and PW5 Kanhiya in their respective statements have very clearly deposed that the accused visited their house on 10.4.1998. Even in the cross examination PW4 Manju and PW5 Kanhiya have categorically stated that the accused had interacted with them for about 30

minutes.

It is further argued that the accused himself had confessed in his disclosure statement Ex.PD that after removing the clothes, he raped the deceased and the clothes of the girl were thrown and hidden by him in the bushes along the Agra Canal and nobody except him knew that fact. It was further submitted that at the pointing of the accused himself, the clothes of the deceased, i.e. frock Ex.P1 and skirt Ex.P2 were recovered from nearby the bushes along the Canal. The said disclosure statement was also duly signed by the accused. It is further submitted that PW3 Daya Shankar at the first instance while reporting the matter to the police had also mentioned about the clothes which the deceased was wearing and they were found to be same as recovered by the police from the place of occurrence on the basis of disclosure statement suffered by the accused-appellant.

We have heard the counsel for the accused as well as the State at length.

A perusal of the statements of PW4 Manju and PW5 Kanhiya shows that the appellant had come to their house and claimed himself to have been sent by Daya Shankar, husband of PW4 Manju. He asked PW4 to prepare tea. Manju PW4 refused to prepare the tea and sent both her children Rachna and Kanhiya to the market for purchasing vegetables and she herself went to take a bath. Thereafter, the accused followed the two children and took Rachna on his cycle by telling that she shall be dropped at her father's shop. Kanhiya returned home and disclosed the taking away of Rachna by the accused to his mother. The statements of both PW4 and PW5 inspire confidence and are truthful. From the depositions of these two witnesses it is clear that it was the appellant who enticed the deceased

Rachna and had killed her.

Neither PW3 Daya Shankar nor his wife Manju PW4 or Kanhiya PW5 knew the accused prior to the occurrence. They have no reason to falsely implicate the accused. It was only when PW3 read a news item in the newspaper 'Punjab Kesri' that he enquired from the police and was told that the accused has been lodged at Rohtak jail and is to appear in the Courts at Faridabad on 15.7.1998. PW3 Daya Shankar took his wife Manju PW4 to the Faridabad Courts where PW4 Manju identified the accused. After identification the appellant confessed that he had raped and killed the young girl and had pushed her in Agra Canal and he also stated that he saw her drowning.

On the basis of the disclosure statement made by the accused, the clothes of the deceased were also recovered from the place which was disclosed by the accused. The contention of the counsel for the accused that PW4 Manju and PW5 Kanhiya could not have identified the accused after a gap of few months is without merit as it has come in the statement of PW4 Manju that the accused had stayed at their house for about 30 minutes. Thus, it is clear that because of the long interaction between the accused and PW4 Manju and PW5 Kanhiya, he could easily be recognized by the aforementioned witnesses.

In Ronny Vs. State of Maharashtra reported 1998 Crl.Law Journal 1638, the Apex Court held that identification of the accused by a witness in the Court, if he had an opportunity to interact with him or to notice his distinctive features, lends assurance to his testimony in the Court and absence of corroborative evidence by way of test identification parade in such circumstances would not be material.

Apart from the above, Daya Shankar PW3, Manju PW4 and Kanhiya PW5 have all identified the frock Ex.P1 and skirt Ex.P2 which belonged to their daughter Rachna. Although there were no identification marks on the clothes but the parents can always recognize the clothes of their family members.

Counsel for the appellant has also argued that as the dead body of the deceased Rachna has not been recovered, therefore, he cannot be convicted under Section 376 IPC.

We find force in this argument because there is no evidence apart from the disclosure statement of the accused that the deceased had been raped before she was killed. In this view of the matter, we hold that the charge under Section 376 IPC is not proved by the prosecution. The appellant is accordingly acquitted of the charge under Section 376 IPC. However, in view of the facts and evidence which has come on record, we have no hesitation in holding that the prosecution has been able to prove through the testimonies of PW3 Daya Shankar, PW4 Manju and PW5 Kanhiya that it is the appellant who had kidnapped the young girl Rachna from the lawful custody of her parents and had thereafter killed the child.

As a result of the aforementioned discussion, we uphold the conviction and sentence of the appellant for the commission of offence under Sections 366, 302 and 201 IPC as held by the trial Court.

The appeal is accordingly dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

November 15, 2007
Gulati

(MOHINDER PAL)
JUDGE